

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1993 Property Tax
SPONSOR(S): Finance and Tax
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Finance and Tax	22 Y, 0 N	Monroe	Diez-Arguelles
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

This bill includes the property tax issues from the Department of Revenue's legislative package as well as other issues related to property tax. Specifically, this bill:

- creates s. 193.017, F.S., dealing with the valuation and assessment of properties which have received a low-income housing tax credit issued by the Florida Housing Finance Corporation ("FHFC")
- amends section 193.501, F.S., to provide that normal maintenance shall not preclude property from being assessed as land used for outdoor recreational or park purposes
- amends 194.011, F.S. to revise details regarding the exchange of information which precedes a value adjustment board hearing
- amends 194.032, F.S. to provide taxpayers with 25 days notice before their value adjustment board hearing are scheduled instead of 20 days notice
- amends s. 194.181, F.S. to allow a person who is statutorily or contractually obligated to pay a property tax assessment to file a law suit to contest that assessment, and specifies that the tax collector shall be a defendant in a suit involving the application for a tax deed
- amends s. 195.062 to allow the Department to amend the real or tangible personal property guidelines to incorporate Florida Supreme Court decisions, technical changes, and other changes, without having to engage in formal rulemaking, provided that no objection to the changes is timely filed
- amends s.196.196(3), F.S. to specify that property used as a bar or restaurant by a veteran's organization shall be considered exempt if the organization or post is exempt from federal income tax under s.501(c)(19)(C) of the Internal Revenue Code and any net earnings for the operation are used in furtherance of the organization's charitable, religious, scientific or literary purpose
- amends s. 197.502, F.S., to specify that submerged sovereignty lands shall not be considered "contiguous" for purposes of 197.502(4)(b), searches of public records required under 197.502, F.S., shall be direct and inverse searches, and that tax collectors who contract with title and abstract companies may negotiate higher liability limits than those listed in s. 627.7843(3), F.S.
- creates s. 689.261, F.S., to require that a prospective purchaser of homestead property be notified that the property taxes may be in excess of the taxes levied in the current year.
- repeals section 373.516, F.S., which addresses the assessment of railroad rights-of-way, as obsolete
- provides an effective date.

While this bill has not yet been reviewed by the Revenue Estimating Conference, the impact of this bill is expected to be a loss of \$0.1 million in local revenues. As such, it is not subject to the mandates provision.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1993.ft.doc
DATE: April 27, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. EFFECT OF PROPOSED CHANGES:

Assessment of Affordable Housing

Chapter 193, F.S., addresses property assessments for real property. Currently, there exist variations between counties in how multifamily affordable housing is valued. The bill creates a new section 193.017, F.S., dealing with the valuation and assessment of properties which have received a low – income housing tax credit issued by the Florida Housing Finance Corporation ("FHFC"). The section directs that neither the tax credits (and the financing generated by the credits) nor any costs paid for by tax credits (and additional financing proceeds received under Chapter 420, F.S.) be considered as income to the property when assessing just valuation. Actual rental income from rent restricted units is to be recognized as such by the property appraiser, who is also directed to take into account the limitation on the highest and best use of the property imposed by recorded documents which restrict the rent which may be charged.

Assessment of Lands used for Outdoor Recreational or Park Purposes

Generally, property is assessed based upon its "highest and best use"¹, regardless of the actual use of the property. Section 193.501, F.S., provides an exception to that rule, stating that only the actual use will be considered under certain circumstances when property is subject to a conservation easement, environmentally endangered, or used for outdoor recreational or park purposes. The statute does not specifically state that normal maintenance of the land for outdoor recreational or park purposes is permitted.

This bill specifically provides language allowing lands which have been assessed under this statute to be maintained for their intended purposes.

Exchange of Information before a Value Adjustment Board Hearing

In 2002, the Legislature passed Committee Substitute for Senate Bill 1360 in an attempt to increase the rights of taxpayers with regard to their property taxes. Among other changes, the bill specified that taxpayers must provide the information that they intend to present at a value adjustment board hearing to the property appraiser at least 10 days before that hearing. The property appraiser must then respond by presenting his information to the taxpayer within 5 days.

This bill revises these exchange provisions to provide that:

¹ Section 193.011(2), F.S.

- The taxpayer must provide his information 15 days before the value adjustment board hearing,
- The property appraiser must provide his information only if a written request is made,
- The property appraiser must provide his information no later than 7 days before the value adjustment board hearing, and
- If the property appraiser does not meet these requirements, the hearing shall be rescheduled.

In order to provide sufficient time for the taxpayer to prepare their information and submit it to the property appraiser 15 days before the hearing, this bill also amends section 194.032, F.S., to provide that the clerk shall notify the taxpayer of the time, date, and location of the value adjustment board hearing 25 days before, instead of 20 days before, the hearing is scheduled to occur.

Parties to a Tax Suit

Under section 194.181(1), F.S., the property owner is a necessary party to a law suit to contest a property tax assessment. However, in some cases, particularly those involving leased property, a person other than the property owner is statutorily or contractually obligated to pay the taxes. This bill would amend the description of the necessary parties to the suit to allow those persons obligated under law or by contract to pay the entire tax, and who have the written permission of the owner, to contest the assessment of the tax.

In addition, 194.181(3), F.S., specifies that the tax collector shall be a defendant in suits involving the collection of taxes or in any "questions relating to tax certificates or tax deeds". However, while Tax Collectors are responsible for taking applications for tax deeds, it is the Clerk of the Court that conducts the tax deed sale and issues the tax deed. This bill amends this provision to specify that Tax Collectors shall be a defendant in questions related to applications for tax deeds.

Methods of Revising the Manual of Instructions

Section 195.062, F.S., instructs that Department of Revenue to publish a Manual of Instructions to assist and advise property appraisers and tax collectors. Although this publication is advisory and does not have the force or effect of rules, the Department is required to go through full rule making procedures in order to revise the manual. As a result the Department is unable to update the guidelines quickly enough to keep them current.

This bill would allow the Department to update the Manual of Instructions to include technical changes, changes indicated by established Supreme Court decisions, and other changes by publishing notice under Section 120.54, F.S. Then, if no objection to the changes is filed within 45 days of the publication of the changes, the Department may incorporate those changes without going through formal rulemaking procedures.

Property used by a Veteran's Organization as a Bar or Restaurant

Section 196.196(3) specifies that property used for profit-making purposes shall be subject to tax even when it is owned and claimed as exempt by a charitable, religious, scientific or literary organization. The statute provides an exception for property use "not requiring a business or occupational license conducted by an organization at its primary residence, the revenue of which is used wholly for exempt purposes". As such, because running a bar or restaurant requires the premises to be licensed, such use subjects that portion of the property used for this purpose to ad valorem taxation.

This bill specifies that property used as a bar or restaurant by a veteran's organization shall be considered exempt if:

- The veteran's organization or post is exempt from federal income tax under s.501(c)(19)(C) of the Internal Revenue code,
- No part of the net earning inures to the benefit of any private shareholder or individual, and

- Any net earnings for the operation are used in furtherance of the organization's charitable, religious, scientific or literary purpose.

Applications for Tax Deeds

When an application has been made for a tax deed the Tax Collector is responsible for notifying the Clerk of the Court that all necessary payments have been made and providing a list of the persons who are to receive notice of the tax deed sale. This requires the Tax Collector to make a search of the public records to obtain the identities of all the relevant parties.

Liability for Title Search or Abstract

Under 197.502(5)(a) the Tax Collector may contract with a title company or abstract company for this search. The statute further provides that "the tax collector may not accept or pay for any title search or abstract if no financial responsibility is assumed for the search. However, reasonable restrictions as to the liability or responsibility of the title or abstract company are acceptable."

Section 627.7843(3), F.S., which addresses title insurance agents, states that when an ownership and encumbrance report is supplied to a consumer it "must provide for a maximum liability for incorrect information of not more than \$1,000." This statute anticipates that the customer will receive adequate protection from errors and omissions when they purchase their title insurance. However, the ownership and encumbrance report contracted for by the Tax Collector is not done in anticipation of the purchase of title insurance.

The bill modifies Section 197.502, F.S., to state that the limitation on liability contained in Section 627.7843(3), F.S. shall not apply to ownership and encumbrance reports contracted for by the Tax Collector for the purpose of noticing a tax deed sale. Instead, the limitations on liability will be set in the contract.

Contiguous Owners

Section 197.502(4)(h), F.S., was amended in 2003 to require that notification that a tax deed is being sold be sent to the owner of any contiguous property. An unintended consequence of this language is an apparent requirement that the State be notified when ever a tax deed sale occurs on waterfront property because the land is contiguous to submerged sovereignty lands, such as the bottoms of the Gulf of Mexico and the Atlantic Ocean.

This bill provides that "contiguous" for the purposes of this Section shall not include submerged sovereignty lands.

Purchase of Property Protected by Save our Homes

Section 4(c), Art. VII of the State Constitution limits the increase in assessment of homestead property to the lesser of 3 percent or the percentage change in the Consumer Price Index, not to exceed just value.² After any change in ownership,³ the property is to be assessed at just

² "Just value" has been interpreted to mean "fair market value." *Walter v. Schuler*, 176 So.2d 81

³ s. 193.155(3) defines a "change of ownership" as any sale, foreclosure, or transfer of legal title or beneficial title in equity to any person, except as provided in this subsection. There is no change of ownership if:

(a) Subsequent to the change or transfer, the same person is entitled to the homestead exemption as was previously entitled and:

1. The transfer of title is to correct an error; or
2. The transfer is between legal and equitable title;

(b) The transfer is between husband and wife, including a transfer to a surviving spouse or a transfer due to a dissolution of marriage;

value as of January 1 of the following year. Section 193.155, F.S., implements this assessment limitation.

Buyers of homestead property may be unaware that the taxable value of the property (assessment) will be based on the just value of the property when property changes ownership, and not on the “limited” assessment enjoyed under “Save Our Homes” by the seller. As a result, new homeowners may receive a tax bill much higher than they or their mortgage company anticipated, resulting in the escrowed amount being insufficient to cover the property tax bill. This results in the escrow payments being increased, possibly above the amount the new homeowner is able to pay.

This bill creates s. 689.261, F.S., to require that a prospective purchaser of homestead property be notified that the property will be re-assessed following the sale, which may result in the taxes being in excess of the taxes levied in the current year. This disclosure summary must be attached to the contract for sale at or before executing the contract for sale, unless a substantially similar disclosure is included in the contract for sale.

The disclosure summary must substantially conform with the following form:

Buyer should not rely on the seller’s current property taxes as the amount of property taxes that the buyer may be obligated to pay in the year subsequent to purchase. A change of ownership or property improvements triggers reassessments of the property that could result in higher property taxes. If you have any questions concerning valuation and ad valorem taxes, please contact your county property appraiser.

If the disclosure summary is not included in the contract for sale, the contract must refer to and incorporate by reference the disclosure summary and all contracts for sale must include, in prominent language, a statement that the potential purchaser should not execute the contract until he or she has read the required disclosure summary.

Taxation of Railroad Rights of Way

Section 373.516 concerns the basis of railroad rights-of-way for the imposition and collection of taxes by water management districts. The Statute provides for a fixed \$4,000 per mile basis of value for these railroad rights-of-way. In a recent audit of the Department’s railroad valuation process, the Auditor General recommended the repeal of section 373.516, F.S. because the language is outdated and no longer being used. The Department and the Water Management Districts have agreed that this provision is obsolete and have requested its repeal.

C. SECTION DIRECTORY:

Section 1 creates s. 193.017, F.S., dealing with the valuation and assessment of properties which have received a low – income housing tax credit issued by the Florida Housing Finance Corporation (“FHFC”).

Section 2 amends s. 193.501, F.S. to provide that normal maintenance and reasonable usage fees shall not preclude property from being assessed as land used for outdoor recreational or park purposes.

Section 3 amends s. 194.011, F.S. to revise the details of the exchange of information which precedes a value adjustment board hearing.

(c) The transfer occurs by operation of law under s. 732.4015; or

(d) Upon the death of the owner, the transfer is between the owner and another who is a permanent resident and is legally or naturally dependent upon the owner.

Section 4 amends s. 194.032, F.S. to provide taxpayers with 25 days notice before their value adjustment board hearing are scheduled instead of 20 days notice.

Section 5 amends s. 194.181, F.S. to allow a person who is statutorily or contractually obligated to pay a property tax assessment to file a law suit to contest that assessment. In addition, it specifies that the tax collector shall be a defendant in questions involving the application for a tax deed as opposed to in all cases involving a tax deed.

Section 6 amends s. 195.062 to allow the Department to amend the real or tangible personal property guidelines to incorporate Florida Supreme Court decisions, technical changes, and other changes, without having to engage in formal rulemaking, provided that no objection to the changes is timely filed.

Section 7 amends s.196.196(3), F.S. to specify that property used as a bar or restaurant by a veteran's organization shall be considered exempt if, the veteran's organization or post is exempt from federal income tax under s.501(c)(19)(C) of the Internal Revenue code, no part of the net earning inures to the benefit of any private shareholder or individual, and any net earnings for the operation are used in furtherance of the organization's charitable, religious, scientific or literary purpose.

Section 8 amends s. 197.502, F.S., to specify that submerged sovereignty lands shall not be considered "contiguous" for purposes of 197.502(4)(b), searches of public records required under 197.502 shall be direct and inverse searches, and that tax collectors who contract with title and abstract companies may negotiate higher liability limits than those listed in s. 627.7843(3), F.S

Section 9 creates s. 689.261, F.S., to require that a prospective purchaser of homestead property be notified that the property taxes may be in excess of the taxes levied in the current year.

Section 10 repeals section 373.516, F.S., which addresses the assessment of railroad rights-of-way, as obsolete.

Section 11 provides that this Act shall take effect on January 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.
2. Expenditures: To the extent that the reduction of local revenues affects the amount of revenue produced by the local school boards' ad valorem levy, including their required local effort, the State may need to expend additional funds for school funding.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The majority of the issues addressed in this bill are administrative issues and have no revenue impact. Section 6 has not yet been reviewed by the estimating conference and will have a fiscal impact. However, in 2003 the estimating conference found that eliminating the ad valorem tax on bars and restaurants owned by all fraternal and benevolent organizations would reduce local revenue by only \$0.1 million.

2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Veteran's organizations which have property which is exempted from ad valorem taxation under the provisions of Section 6 of this bill will see an economic benefit.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

While this bill does have an impact on the ability of local governments to raise revenue, that impact is minimal and the mandates provision does not apply to this bill.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES